Criminal Revision No.602 of 1993.

IN THE HIGH COURT FOR THE STATES OF PUNJAB & HARYANA AT CHANDIGARH

...

Date of Decision: November 21,2007.

Ramphal **...** Petitioner

VERSUS

State of Haryana **...**Respondent

1. Whether the Reporters of Local Newspapers may be allowed to see the judgment ?

2. To be referred to the Reporters or not ?

3. Whether the judgment should be reported in the Digest ?

CORAM :

HON'BLE MR. JUSTICE MOHINDER PAL.

Present: Mr. Ashish Gupta, Advocate,
for the petitioner.

Mr. S.S. Goripuria, Deputy Advocate General, Haryana.

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MOHINDER PAL, J.

The petitioner was convicted under Sections 279 and 304-A of the Indian Penal Code (for short `the Code') by the trial Court. For the former offence he was sentenced to

undergo rigorous imprisonment for three months besides fine of Rs.5,000/- and in default to undergo further rigorous imprisonment for one month and for the latter offence he was sentenced to undergo rigorous imprisonment for two years and to pay fine of Rs.1,000/- and in default to undergo further rigorous imprisonment for a period of two months. On appeal, the lower appellate Court held that the offences under Sections 279 and 304-A of the Code are overlapping in nature and accordingly ordered that no separate sentence shall be awarded to the petitioner in respect of offence under Section 279 of the Code. The sentence of two years' rigorous imprisonment under Section 304-A was maintained. However, as the complainant had already received compensation, it was ordered that the petitioner would not be liable to pay fine. The petitioner has challenged the judgment of the lower appellate Court by way of filing this revision petition.

2. As per case of the prosecution, on August 16, 1986, in the area of Village Talwandi Rana, the petitioner drove the offending vehicle bearing registration No.HYT-4267 rashly and negligently and caused the accident, as a result of which Ms. Bindu died. At that time Ms. Bindu was coming from Barwala side towards her house in Village Talwandi Rana. The offending vehicle was proceeding towards Barwala side at full speed. The petitioner caused the accident by taking the offending vehicle to wrong side of the road.

3. The trial Court, while taking into account the evidence

of the eye-witnesses and particularly the own admission of the accused regarding driving the offending vehicle at the time of accident, convicted and sentenced the accused, as sated above.

4. I have heard Mr.Ashish Gupta, learned counsel for the petitioner and Mr. S.S. Goripuria, learned Deputy Advocate General, Haryana, and have gone through the records of the case.

5. Learned counsel for the petitioner has taken me through the evidence of the material witnesses of the prosecution and has argued with vehemence that the accused was entitled to acquittal as neither of these witnesses was present at the spot nor they had been able to identify the accused except for the first time in the Court.

6. On the other hand, learned Deputy Advocate General, appearing for the State, has reiterated the arguments raised before the trial Court as well as in the lower appellate Court and stated that the conviction of the petitioner may be upheld.

7. Complainant Bala Ram (P.W.5) is author of the First Information Report. In his examination-in-chief, he reiterated the averments made at the time of recording of the First Information Report. However, in his cross-examination, it has been admitted that he had not seen the driver. There was no light at the spot. However, moonlit-light was there. He has mentioned the registration number of the offending vehicle as HYT-4267. However, no such reference had been made at the time of recording of the First Information Report. Further, he has given the colour of the truck as blue. It has been contradicted by the

other witnesses. It has been stated that after the incident Golu Ram (P.W.2) and Suraj Bhan (P.W.3) reached the spot on a motor-cycle and they were asked to chase the truck. Golu Ram (P.W.2), when examined in the Court, failed to mention the year in which the accident had taken place. According to him, they found the truck abandoned. He was neither knowing the name of the deceased nor name of the driver or the registration number of the offending truck. Nowhere in his evidence it has come that he had reached the spot on a motor-cycle or that he along with Suraj Bhan chased the truck. On the other hand, a close perusal of the evidence of Suraj Bhan (P.W.3) shows that he was not knowing he name of the victim, registration number of the truck and name of the driver of the truck. It is highly improbable that two persons together will chase a truck and will come out with a different version. Suraj Bhan (P.W.3) has further admitted in his cross-examination that he has no motor-cycle nor can drive the same. Rather, it has been stated that he along with the other witnesses was sitting at a distance when the accident had taken place. He has further admitted that after the accident, he saw the accused in the Court for the first time despite the fact that the accused was not known to him earlier to the accident.

8. When the incriminating evidence was put to the accused at the time of his examination under Section 313 of the Code of Criminal Procedure, he denied regarding the accident or that he was rash and negligent at the time of accident. It has been pleaded that he has been involved in a false case. He has further stated that

he was owner of the truck. The trial Court has taken into account small part of the statement of the accused and reached to the conclusion that as the accused was driving the offending vehicle at the relevant time, so he has caused the accident and was guilty for rash and negligent driving of the same. By truncating the statement of the accused under Section 313 of the Code of Criminal Procedure, no basis can be formed to convict him particularly so when in some part of the statement he has denied the allegations and pleaded for his innocence. The statement has to be read as a whole and not in parts.

9. In view of the aforesaid discussion, it cannot be said that the prosecution has been successful in proving its case against the petitioner beyond all reasonable doubts. Consequently, this revision petition is accepted, the judgment of the lower appellate Court is set aside and the petitioner is acquitted of the charges framed against him after giving him the benefit of doubt.

November 21, 2007. **(MOHINDER PAL)**
ak **JUDGE**